FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 9 1958
JAMES R. BROWNING, Clerk

No. 433

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

In the Matter of
JOHN RASLICH,
Petitioner ~~below~~.

-vs-

STATE OF MICHIGAN, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR THE COUNTY OF GENESEE (MICHIGAN) AND APPENDIX

JAMES MCTAGGART,
Attorney of Record for Petitioner.
Business Address:
501 Dryden Building,
Flint, Michigan.

JOSEPH R. JOSEPH,
Of Counsel for Petitioner.
Business Address:
226 W. Court Street,
Flint, Michigan.

RICHARD C. FRUIT,
Of Counsel.

AMERICAN BRIEF AND RECORD COMPANY, FIFTY MARKET AVENUE, N.W., GRAND RAPIDS 2, MICHIGAN — PHONE GL 8-5326

INDEX

	Page
A. REFERENCE TO OPINIONS AND REPORTS	1
B. STATEMENT OF JURISDICTIONAL GROUNDS	1
(I) Date of judgment and time of entry	1
(II) Orders on applications for leave to appeal to Supreme Court of Michigan	2
(III) Statutory provisions conferring jurisdiction	2
C. QUESTIONS PRESENTED FOR REVIEW	2
D. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
E. CONCISE STATEMENT OF CASE	3
F. PROCEEDINGS IN STATE COURT CONFERRING JURISDICTION TO REVIEW FEDERAL QUESTIONS	4
G. ARGUMENT	4

INDEX TO CASES AND AUTHORITIES CITED

Page

Attorney General vs. Montgomery, 275 Mich. 504, 267 N.W. 550 8
34 A. L. R. 1143; 79 A. L. R. 827; 21 A. L. R. (2d) 1107 6

Baker vs. Comm. of Kentucky, 132 S.W. (2d) 766, 125 A. L. R. 691, 280 Ky. 165 6
Brock vs. North Carolina, 344 U. S. 424, 73 S. Ct. 349, 97 L. Ed. 457 4

Ciucci vs. Illinois, 78 S. Ct. 839 5
Commonwealth vs. Barillo, 113 A. 663 (Penna.) 7
Commonwealth vs. Gray, 60 S.W. (2d) 133 7

Davis vs. State, 164 S.W. (2d) 686 7

Hipple vs. State, 191 S.W. 1150 7

Jordan vs. State, 44 S.E. (2d) 821 7

Sec. 27.2281, Michigan Statutes Annotated 4
Sec. 28.1041, Michigan Statutes Annotated 2

Patton vs. U. S., 281 U. S. 276; 74 L. Ed. 854 7
People vs. Brosky, 222 Mich. 651, 193 N.W. 194 7
People ex rel Totalis vs. Craven, 20 N. Y. S. (2d) 533 ..... 4, 7
People vs. Parker, 145 Mich. 488, 108 N.W. 999 6
People vs. Pickett, et al, 339 Mich. 294 6

State vs. Grayson, 90 So. (2d) 710 7

Title 28, United States Code, Sec. 1257 2

U. S. vs. Perez, 9 Wheat. 579 6

TABLE OF CONTENTS

	Page
Partial proceedings on first trial, January 24, 1958	1a
Motion to dismiss in Genesee County Circuit Court	5a
Answer to Prosecuting Attorney to Motion to dismiss	7a
Journal entry denying motion to dismiss	8a
Application for writ of habeas corpus from the Supreme Court of Michigan (Supporting brief omitted)	9a
Answer of Genesee County Prosecuting Attorney to Application for writ of habeas corpus	12a
Partial proceedings on second trial in Genesee County Circuit Court (as to double jeopardy)	16a
Journal entry of conviction	19a
Journal entry of sentence	20a
Application for leave to appeal to the Supreme Court of Michigan (Concise Statement of facts and supporting brief omitted)	21a
Order of Supreme Court of Michigan denying original writ of habeas corpus	22a
Order of Supreme Court of Michigan denying application for leave to appeal	24a
Sec. 28.1041, Mich. Stat. Ann. (14 member jury statute)	25a
Fifth Amendment to U. S. Constitution	26a
Fourteenth Amendment to U. S. Constitution	26a

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

In the Matter of
JOHN RASLICH,
Petitioner ~~below~~.

vs.

STATE OF MICHIGAN, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF GENESEE COUNTY

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

John Raslich prays that a Writ of Certiorari be issued to review the final judgment of the Circuit Court for the County of Genesee, Michigan.

A.

Reference to Official Reports

The case is unreported, appeal having been denied without opinion by the Supreme Court of Michigan.

B.

Grounds upon which Jurisdiction is Invoked

(I) Review is sought of a judgment of conviction, rendered by the Circuit Court for the County of Genesee (Michigan) on April 30, 1958, and sentence imposed June 2, 1958.

(II) The Supreme Court of Michigan denied leave to appeal July 15, 1958.

(III) Jurisdiction of this Court is invoked under Title 28, *United States Code*, Sec. 1257, which provides, in part: • • •

> "Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "By writ of Certiorari • • • Where any title, right, privilege or immunity is specially set up or claimed under the Constitution. • • •"

C.

Questions to be Presented for Review

1. Did the discharge of a jury, because of anonymous telephone calls to the families of three of fourteen jurors, only one of whom was ascertained to have been in any way intimidated, amount to unconstitutional double jeopardy? Fifth and fourteenth amendments.

2. Where the jury in a murder case was permitted to go home nights, and anonymous phone calls were received by members of juror's families, was it lack of due process to discharge the fourteen member jury panel, near end of trial, and require defendant to submit to a second trial; without ascertaining whether there were twelve members who were not intimidated; and without the consent of the Defendant?

D.

Constitutional Provisions, and Statutes Involved

The provisions of the Federal Constitution involved are the Fifth and Fourteenth amendments, appearing in the appendix hereto, and particularly the portion of the Fifth Amendment, as to double jeopardy, as applied by inference in the Fourteenth Amendment to state court trials.

The provision of the Michigan Statute involved is Sec. 28.1041 *Mich. Stat. Ann.* providing for impanelling 14 jurors to hear a case, two to be eliminated by lot before deliberations; as appears in appendix hereto.

E.

Concise Statement of Facts

Defendant was placed on trial before a panel of 14 jurors, on a charge of first degree murder. The case proceeded for one day, the People's case was largely presented, and the jurors were sent home for the night. The following morning, one of the jurors, a woman, privately reported to the Judge that she had received phone calls, and that she (according to the Court) could not be an impartial juror.

The phone call or calls arose because of a previous trial in which 7 of the 14 jurors had sat, in which Defendant was acquitted by reason of temporary insanity; which trial was extensively reported in the newspapers, and excited public interest.

Two male jurors specifically stated that phone calls were received by members of their families, and were not threatening. They were not questioned either publicly or privately any further, to ascertain whether they felt intimidated, or unable or reluctant to continue to sit. All members of the jury continued to sit in criminal cases, during the term.

The Court announced that the jury would be discharged. Defendant's consent was not asked nor given. His attorney stated after the decision had been made that he thought the Court was doing the right thing. However, on further study, counsel became convinced that he had no right, under the decisions, to waive the Defendant's right to a jury trial, and his right not to be subjected to double jeopardy — that the consent must be that of the Defendant, and cannot even be asked of him, in a capital case.

Believing, therefore, that the Defendant had a complete legal defense of double jeopardy, and attempting to postpone trial until the Supreme Court could pass upon the issue, raised by petition for writ of original habeas corpus, Defendant and counsel consented to a non-jury trial. The trial was had almost immediately. The defense of double jeopardy was overruled (Sec. F hereof), and Defendant convicted of second degree murder, and sentenced to 7½ to 15 years in prison, where he now is. Leave to appeal was denied, by the State Supreme Court. (Sec.

F gives proceedings in Supreme Court of Michigan). In Michigan, appeals in criminal cases may be had only upon leave granted.

F.

Issues Raised in State Court

The defense of double jeopardy was first raised by motion in the Genesee County Circuit Court, as shown in appendix, including the constitutional issues.

Upon denial of the motion application was made to the Supreme Court of Michigan for original writ of habeas corpus, (or alternative writ of certiorari, Sec. 27.2281, *Mich. Stat. Ann.*), raising constitutional points. This was upon the authority of *People ex rel Totalis vs. Craven*, 20 N. Y. S. (2d) 533; no Michigan authority found. The application was passed on *after* the second trial, and the points raised by Petitioner were apparently not considered by the Supreme Court (Appendix):

Although a jury was waived, because of this defense, and to allow time for the Supreme Court to pass upon the application for habeas corpus or certiorari, the Defendant was promptly tried by the Court. The defense was raised on the trial, of double jeopardy, including the constitutional issues, directly and by reference to the prior motion, and overruled; as appears in Appendix..

Application was then made to the Supreme Court of Michigan, raising the Constitutional questions, and this application was denied, without opinion.

G.

Argument

This Honorable Court has inferentially adopted the doctrine, that the Fifth Amendment prohibition against double jeopardy applies, through the Fourteenth Amendment, to the State Courts; without having specifically decided the point.

In *Brock vs. North Carolina*, 344 U. S. 424, 73 S. Ct. 349, 97 L. Ed. 457, the majority opinion, and the concurring opinion of Mr. Justice Frankfurter, held that the doctrine of double jeopardy did not apply to the States, unless

the particular facts of the case amounted to want of due process. North Carolina, alone of the 47 states (according to the dissenting opinions) permitted the Court to declare a mistrial, where, as in that case the Prosecutor was unable to compel some of his witnesses to testify. The majority said that the state could adopt such a doctrine. (Michigan and other opinions following contrary view are cited below).

The late Chief Justice Vinson, dissenting, quoted earlier North Carolina cases to the effect that double jeopardy was permitted by the Stuarts, but the doctrine was abhorrent to American ideas of jurisprudence. Mr. Justice Douglas, dissenting, quoted Lord Coke to the effect that a Defendant should be subject to a second trial only for his own benefit. Mr. Justice Black did not sit.

The strong dissenting opinions were apparently recognized in *Ciucci vs. Illinois*, 78 S. Ct. 839. Four dissenting justices held that three trials of the Defendant, denied him due process. The prevailing per curiam opinion affirmed the judgment below, but without prejudice to Petition making a further showing as to newspaper articles. The majority in the *Ciucci* case, however, did not reject the premises of the dissent, but apparently recognized same; and that in fact there was no double jeopardy. The Defendant was tried successively for murder of three different persons by shooting them, and burning down the building. The majority held that the State court was correct in holding that each shooting and each killing was a separate offense, so that there was, in fact, no double jeopardy involved.

Petitioner submits that his constitutional rights were infringed, by his being twice placed in jeopardy, without steps having been taken by the State Court, readily in its power, to prevent such jeopardy. Petitioner believes that the State Court owed him a duty to avoid newspaper publicity, and crank phone calls, placing him in a position of double jeopardy.

Thus, newspaper publicity plus crank phone calls, were able to determine by what panel Defendant could be tried.

As stated in the Prosecutor's answer to the Application for Habeas Corpus, (Appendix hereto), seven members of the 14 member panel had sat in the Fisher murder case; in which a local business man had been acquitted

of murdering his wife, by reason of temporary insanity. The case had been played up on the press. This type of verdict always causes an unfavorable reaction among some of the public. As further stated in the Answer, the crank callers assumed (incorrectly) that the Petitioner intended to raise a similar defense.

Petitioner submits that, if the jury in a murder case is not required to be isolated and protected from interference — including cranks — [1], it is up to the State to protect the Defendant by some substitute. That substitute is the 14 member jury panel. (Statute appears in Appendix).

But, for the fourteen member jury panel to be a protection to a Defendant, it is necessary that the trial court use it, by proceeding with the trial if 12 jurors remain unintimidated. Instead, the trial court declared a mistrial because one juror, in the judge's chambers, without counsel being present, was supposed to have said she could not sit; whereas there was reason to believe that 13 of the jurors were willing to proceed.

Thus, where 13 jurors were impanelled, illness of one juror and the death of the spouse of another, was held not to create "urgent necessity" for the discharge of the panel, without formal investigation as to the possibility of continuing with 12 jurors; *Baker vs. Comm. of Kentucky*, 132 S. W. (2d) 766, 125 *A. L. R.* 691, 280 Ky. 165.

The requirement of "urgent necessity" for the discharge of a jury and declaring a mistrial, was stated in *People vs. Parker*, 145 Mich. 488, 108 N. W. 999; quoting Mr. Justice Story in *U. S. vs. Perez*, 9 Wheat. 579. In the

---

(1) While it has not been the custom in Genesee County in recent years to separate the jury, at least prior to deliberation, the Court does so when it wants to. The last instance was *People vs. Pickett, et al*, 339 Mich. 294, cert. den., 349 U. S. 937, a gambling conspiracy case arising out of a one man grand jury investigation. In many jurisdictions, it is improper for a jury to separate during capital cases; 34 *A. L. R.* 1143; 79 *A. L. R.* 827; 21 *A. L. R.* (2d) 1107; in other jurisdictions, discretionary with the trial court. Perhaps this case shows that the more liberal view is actually dangerous to the rights of defendants.

Parker case, the Court discharged the jury because of rumor of misconduct, without a formal public hearing, and this was held to have caused double jeopardy.

In the instant case, the proceedings concerning the woman juror were based on her statements in the judge's chambers, in the absence of counsel. The two male jurors, whose families had received telephone calls, stated that they were not of a threatening nature. Neither they, nor the other 9 jurors, were asked whether they felt intimidated, or otherwise unable to proceed to a verdict. No "urgent necessity" was shown beyond mere surmise.

Other cases holding that a mistrial should not be declared except in cases of "urgent necessity," are:

People vs. Brosky, 222 Mich. 651, 193 N. W. 194;
Davis vs. State, 164 S. W. (2d) 686;
Commonwealth vs. Gray, 60 S. W. (2d) 133;
Jordan vs. State, 44 S. E. (2d) 321;
People vs. Craver, 20 N. Y. S. (2d) 533.

While consent may be given by the Defendant, it must be actual, and not by mere silence:

Davis vs. State, 164 S. W. (2d) 686, supra.

And the consent must be that of the Defendant, not of his counsel:

Patton vs. U. S., 281 U. S. 276; 74 L. Ed. 854;
State vs. Grayson, 90 So. (2d) 710;
Hipple vs. State, 191 S. W. 1150, 1155 (on rehearing);
Commonwealth vs. Gray, 60 S. W. (2d) 133.

It is improper to ask the Defendant to consent to a mistrial, in a capital case. If he is asked, his consent will not bind him:

Commonwealth vs. Barille, 113 A. 663 (Penna.).

Therefore "urgent necessity" required to be shown by formal inquiry, for the discharge of the jury, not having been established, there was improper double jeopardy, under previous decisions of the Michigan Supreme Court.

If the statement by counsel could be construed as consent, it was beyond his power to grant such consent; and illegal for the Court to ask it.

Under the opinions first cited in this argument, we submit that there was illegal double jeopardy; and, therefore, Petitioner's rights under the Fifth and Fourteenth Amendments were violated; and the State Court failed to protect Petitioner's constitutional rights.

SUMMARY OF ARGUMENT

It is not always sufficient due process, to afford a Defendant who is affected by newspaper-inspired hysteria, a new trial — particularly when the hysteria arises from a case which does not involve him. Due process also required that a Defendant not be subjected to being twice tried for the same offense, except in cases of "Urgent Necessity". Where the law does not protect the jurors and Defendant from cranks, by segregating the jury, it should supply an alternative. The fourteen-man panel is aimed at avoiding interruption of trial by untoward misadventure of jurors. But to afford a Defendant the protection of this substitute procedure, the Court must strictly apply the doctrine of "Urgent Necessity". And this doctrine requires that the Court be positive, by open inquiry and questioning, that twelve jurors do not remain who can try the case.

In the instant case, the trial court failed to afford the Petitioner the protection of the statute, by making full and open inquiry of the 13 jurors, as to whether 12 of them could not continue to try the case. (Or even 11, if the Defendant consented, freely and voluntarily to such course: *Attorney General vs. Montgomery*, 275 Mich. 504, 267 N. W. 550).

And this requirement, that the consent of the Defendant be given freely, also prohibits counsel from giving consent to a mistrial for him; or the Defendant from being pressured, or even asked, to consent to a mistrial.

WHEREFORE, the Petitioner prays that a Writ of Certiorari issue under the seal of this court, directed to the Circuit Court for the County of Genesee, State of Michigan, to the end that this cause may be reviewed and determined by this court as provided by the authority of the United

States, and that the judgment herein of said Circuit Court for the County of Genesee, Michigan, may be reversed, and the Petitioner discharged from imprisonment.

Respectfully submitted,

JOHN RASLICH,
Petitioner.

JAMES MCTAGGART,
Counsel of Record for Petitioner.

JOSEPH R. JOSEPH,
Of Counsel.

RICHARD C. FRUIT,
Of Counsel.

APPENDIX

PROCEEDINGS HAD ON FRIDAY, JANUARY 24, 1958

PROCEEDINGS HAD in the above entitled cause before the HONORABLE PAUL V. GADOLA, and a Jury, on Friday, January 24, 1958.

Flint, Michigan
Friday, January 24, 1958
10:00 o'clock a.m.

THE COURT: Certain matters have arisen and been called to the attention of the Court that the Court feels must be inquired into, so that the ends of Justice will be met on all sides. Now, in the first place, how many on this panel were on the Fisher Jury?

(Seven jurors raise hands).

THE COURT: How many of you have received telephone calls?

(Three jurors raise hands).

THE COURT: As I understand it, — I have talked with one of you, — as I understand it, some of these calls were very scurrilous and —

JUROR NO. 7: I didn't get the last call. Whoever it was calling was cussing and swearing. The lady that called, she didn't threaten, not to me.

MR. JOSEPH: Can we get that Juror's name on the record?

THE COURT: Number Seven.

MR. O'ROURKE: Mr. Tallman.

THE COURT: And you —

JUROR: "Brown" is my name. My wife took the call about two o'clock last night. It implied a few things, but it wasn't really threatening in nature.

THE COURT: Well, the whole question arises, of course, as to whether this jury with the seven members on this panel that sat on the Fisher panel would be intimidated in any manner, in any form, and that is the whole question. Now, there are rules that apply, and our Supreme Court has said:

"While that limited and conditional power to discharge the jury is recognized as reserved to the court for those rare cases where a manifest necessity arises or facts are discovered showing in the opinion of the court that the ends of public justice would otherwise be defeated, it should when not consented to by the defense be given careful consideration and only exercised when conditions in the nature of an emergency have risen satisfying the court that manifest necessity or the ends of justice make it imperative."

The whole question that arises in the mind of the court, there are seven of you here that sat on the Fisher jury, and three of you have been contacted, and more than once, relative to it. As I explained to the one juror that I talked to, no one can question your decision. No one has the right to question your decision in any manner or form, but nevertheless, anonymous telephone calls, and so forth, we have no way of tracing, and the whole fear of the Court is that the seven members of this panel, if it continues as it might continue, or after what has happened, I know that it has been talked over among you, I guess, because everyone seems to know about these calls, — as to whether or not there might be something to intimidate you or something, so that a fair and impartial decision could not be had. Now, that is the equation of the Court and the opinion of the Court in that matter, and it is our duty, it is the duty of the Courts, as you have had explained to you often, and it is your duty, as you know it, as having sat on these juries, and so forth, to fairly and impartially decide the matter, and it is the duty of the prosecution to present everything, whether in favor of the defendant or adverse to a defendant, so that all of the facts are in and so that a jury may sit and deliberate without any outside influences taking part at all in their deliberations. The Court, even though the law allows us to comment in a case, or to give you instructions relative to facts, if the Court sees fit to do so, still that is circumscribed; we have to be very careful. Even though the Court might do that the Jury is always instructed they can ignore anything the Court says relative to facts, because that is within your province, but we certainly, if there is any question of intimidation of any manner of the

Proceedings had on Friday, January 24, 1958

jurors, in all justice, — of course, we can't pry into your minds, and you yourself probably can't at this time know exactly what the effect of those things will be upon you, but if it may have any effect, of course, you know that that isn't fairness and justice, and that is the whole thing, and we have talked this over, and the Court may take the responsibility, if the defense has no objection, of discharging this jury —

MR. JOSEPH: I understand the Court has investigated the facts.

THE COURT: I have investigated the facts, and I am fearful that it might affect this jury seriously, — seven persons on the jury out of twelve that might — seven sat on the other jury, where some of them have been threatened or harassed. I don't believe it would be fairness to either the People or the defendant to —

MR. JOSEPH: I really appreciate the Court's interest in this matter, your Honor, and I think the Court is doing right.

MR. O'ROURKE: Your Honor, before you do that I wonder if it might not be well to get the juror's name you consulted with in chambers on the record and let her make a record of what happened.

THE COURT: I don't — what is your name?

THE JUROR: Mabel King.

THE COURT: It is questionable again whether I want to make a public record of the things that were said to her, and if that becomes public knowledge, again it will suggest to somebody else to make some of these crazy calls.

MR. O'ROURKE: What I have in mind is this, the Court is deciding or determining, — I am in agreement with the Court in all probability this jury may be prejudiced one way or another in regard to their verdict, but you base considerable of your opinion on the position taken by Mrs. King.

THE COURT: As I understand it, one of you men that were called, called the State Police last night, is that right?

JUROR NO. SEVEN: He is not in this Court.

THE COURT: Oh, is he in Elliott's Court?

JUROR NO. SEVEN: I don't know.

Proceedings had on Friday, January 24, 1958

THE COURT: In another Court?

JUROR NO. SEVEN: Another Court.

MR. O'ROURKE: This is another member of the panel that was called.

THE COURT: But you have knowledge of it, and you know it went on.

JUROR NO. SEVEN: Yes.

THE COURT: He was really threatened with violence?

JUROR NO. SEVEN: Yes.

THE COURT: You people have all, as I say, you have probably all talked this over. You have knowledge of what was going on.

MR. O'ROURKE: Your Honor, I do recall, if we can just for the record say, my recollection of Mrs. King's position was she didn't feel because of the calls at least she could —

THE COURT: She didn't feel she could be a fair and impartial juror.

MR. O'ROURKE: That's right.

THE COURT: She didn't feel she could be a fair and impartial juror.

JUROR KING: That's right.

THE COURT: How far that might extend to the rest, I have no way of knowing, but nevertheless if one was so frightened to feel that way, others might be, and as I say, I don't want to go into the threats that were made. I know this one juror, he was threatened with violence, and that is the way the thing stands, so if there is no objection on the part of the defense we will declare this a mistrial and discharge the jury, so you are discharged from further consideration of the case.

MOTION FOR DISMISSAL

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF GENESEE

People of the State of Michigan,
Plaintiffs,
vs. No. 16269

John Rashlik,
Defendant.

John Rashlik, being duly sworn deposes and says that he is the defendant in the above entitled cause and that on January 23, 1958, his case was called for trial and that he appeared before the Honorable Paul V. Gadola, represented by his attorney, Joseph R. Joseph.

That a jury of fourteen men and women were sworn to try his case, and that approximately ten witnesses were sworn, who were thoroughly examined and cross examined by both the prosecuting attorney and his attorney, and that the nature of the testimony is substantially as follows:

That the cause of death was established by doctors; pathologists testified; Michigan State Police officers testified; conversations over a telephone were testified to and the testimony of the son of the deceased was received in evidence in regard to declarations of the defendant, and in general the trial was almost completed when court was adjourned until the morning of January 24, 1958. At that time one of the jurors expressed the opinion to the trial court that she could not be fair and impartial in this matter because of a certain anonymous telephone call that she had received during the evening.

Deponent further states that if such call was received by the juror, the same was not done with his knowledge, consent or approval and as he is informed, and believes and charged it to be the truth, that the said telephone call pertained to another trial, namely the trial of the People of the State of Michigan vs. James Fisher, and held before the Honorable Stephen J. Roth.

Deponent further states that after the said trial was completed, members of that same jury were called upon and did serve before the Honorable Philip Elliott, Circuit Judge, and in the trial entitled People of the State of Michigan vs. Gordon Shelley and that part of the jurors as he is now informed, served upon the jury upon which he was about to be tried.

Further, that after the so-called mistrial was granted by the Circuit Judge, members of that jury were also called and impanelled to sit upon the case of the People of the State of Michigan vs. Robinson Stacey and tried before the Honorable Paul V. Gadola.

Deponent further states that he never consented or approved of this so-called mistrial and therefore respectfully asks that said cause be dismissed by virtue of the statute of the State of Michigan and the constitution of the State of Michigan which provides that no defendant shall be placed in jeopardy twice for the same offense, and further that the Fifth Amendment of the Federal Constitution provides: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

Deponent further states that there was valid information on file and that the Circuit Court for the County of Genesee had jurisdiction to try the offense charged against him. Deponent further states that fourteen jurors were drawn and that in the investigation by the Court only one juror stated that she could not be fair and impartial, thereby leaving the remaining thirteen jurors as competent jurors to pass upon the facts of this case.

Deponent further says that the remaining jurors still constituted a number in excess of twelve, that could have passed upon the matters in dispute.

Deponent further says not.

John Raslich,
Deponent.

Sworn to and subscribed before me this 13th day of February, A. D., 1958.

Ralph I. Denton,
Notary Public, Genesee County, Mich.
My commission expires: 8/26/61.

Joseph & Joseph,
Attorneys at Law.
226 W. Court St.,
Flint, Michigan.

PLEADING

ANSWER TO MOTION FOR DISMISSAL

Now comes Jerome F. O'Rourke, Prosecuting Attorney for Genesee County, Michigan on behalf of the People of the State of Michigan and makes answer to the Motion of the Respondent for Dismissal as follows:

In the above entitled case an examination of the jury panel in open Court in the presence of the Defendant and his Counsel subsequent to the empanelling of the jury disclosed that seven of the fourteen jurors empanelled in the case, had the day previous to being empanelled in the case at bar, sat as jurors and reached a verdict in the case of the People against James Fisher, that this last mentioned case was a Murder case. Investigation by the Court in open Court disclosed that of the seven members of the jury in the case at bar who sat on the Fisher case, so called, three had received anonymous calls from members of the public relative to their verdict in the Fisher case. Investigation further disclosed that all members of the jury were aware of these phone calls and were aware that other members of the jury panel who had sat in the Fisher case had received anonymous telephone calls. The Court's investigation further discloses that the telephone calls were generally of a threatening nature. It was also determined in open Court that one of the jurors could

not try the case at bar impartially because of these phone calls.

Counsel for the Respondent was present at the time the Court indicated he would discharge the jury, and when the Court inquired as to his position in that regard, Counsel for the Respondent advised the Court that he understood what the Court was doing and that he agreed that it was doing the right thing.

Jerome F. O'Rourke

Dated: February 20, 1958.

Jerome F. O'Rourke,
Prosecuting Attorney.
106 Court House,
Flint, Michigan.

JOURNAL ENTRY OF CIRCUIT COURT FOR THE COUNTY OF GENESEE

At a General Term of the Circuit Court for the County of Genesee, continued and held at the Court House, in the City of Flint, in said County, on Monday, the 24th day of February, 1958.

Present: Hon. Paul V. Gadola, Circuit Judge.

The Court was opened for business in due form.

This cause came on for hearing upon a motion by Joseph R. Joseph to dismiss and being fully advised in the premises, it is Ordered and Adjudged by the Court now here that said motion be and the same is hereby DENIED.

The Court did some Chancery business whereupon Court was adjourned until tomorrow morning at nine o'clock.

Paul V. Gadola,
Circuit Judge.

Journal Entry Denying Motion to Dismiss
Application for Writ of Habeas Corpus or Certiorari

STATE OF MICHIGAN
SS.
COUNTY OF GENESEE

I, GEORGE G. DUNN, Clerk of the County of Genesee, and Clerk of the Circuit Court for said County, the same being a Court of Record and having a seal, do hereby certify that I have compared the annexed copy of Circuit Court Journal Entry, Case No. 16269 with the original record thereof now remaining in my office, and have found the said copy to be, and that the same is, a true and correct transcript therefrom, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Flint, in said County and State, this 26th day of September, 1958.

(SEAL)

George G. Dunn,
Clerk.
By Doretha Smith,
Deputy Clerk.

APPLICATION FOR WRIT OF HABEAS CORPUS OR CERTIORARI

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

In the Matter of
John Raslich

Your petitioner, John Raslich, of the City of Flint, County of Genesee and State of Michigan, respectfully shows unto the Court as follows:

1. That your petitioner is imprisoned and restrained of his liberty by one Donald Carmichael, Sheriff of Genesee

County, and that he was imprisoned, and restrained of his liberty at the Genesee County jail in the City of Flint, Genesee County, Michigan.

2. That petitioner is not committed, detained, confined or restrained of his liberty by virtue of any process, commitment, conviction, judgment, decree or execution specified in Section 8, of the Habeas Corpus Act.

3. That the cause or pretense for such confinement and restrainment of this petitioner, according to the best of his knowledge and belief, is based upon the fact that he was arrested and charged with the crime of murder, and that on January 23, 1958, his case was called for trial and he appeared before the Honorable Paul V. Gadola, represented by his attorney, Joseph R. Joseph.

That a jury of fourteen (14) men and women were sworn to try this case, and that approximately ten (10) witnesses were sworn, who were thoroughly examined and cross-examined by the Prosecuting Attorney and his attorney, and that the nature of the testimony is substantially as follows:

That the cause of death was established by doctors; pathologists testified; Michigan State Police officers testified; conversations over a telephone were testified to and the testimony of the son of the deceased was received in evidence in regard to declarations of the defendant, and in general the trial was almost completed when court was adjourned until the morning of January 24, 1958. At that time one of the jurors expressed the opinion to the trial court that she could not be fair and impartial in this matter because of a certain anonymous telephone call that she had received during the evening.

Deponent further states that if such call was received by the juror, the same was one with his knowledge, consent or approval and as he is informed, and believes and charges it to be the truth, that the said telephone call pertained to another trial, namely the trial of the People of the State of Michigan vs. James Fisher, and held before the Honorable Stephen J. Roth.

Deponent further states that after the said trial was completed, members of that same jury were called upon and did serve before the Honorable Philip Elliott, Circuit

Judge, and in the trial entitled People of the State of Michigan vs. Gordon Shelley and that part of the jurors as he is now informed, served upon the jury upon which he was about to be tried.

Further, that after the so-called mistrial was granted by the Circuit Judge, members of that jury were also called and impanelled to sit upon the case of the People of the State of Michigan vs. Robinson Stacey and tried before the Honorable Paul V. Gadola.

Deponent further states that he never consented or approved of this so-called mistrial and therefore respectfully asks that said cause be dismissed by virtue of the statute of the State of Michigan and the constitution of the State of Michigan which provides that no defendant shall be placed in jeopardy twice for the same offense, and further that the Fifth Amendment of the Federal Constitution provides: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

Deponent further states that there was a valid information on file and that the Circuit Court for the County of Genesee had jurisdiction to try the offense charged against him. Deponent further states that fourteen jurors were drawn and that in the investigation by the Court, only one juror stated that she could not be fair and impartial, thereby leaving the remaining thirteen jurors as competent jurors to pass upon the facts of this case.

Deponent further says that the remaining jurors still constituted a number in excess of twelve, that could have passed up the matters in dispute.

That said imprisonment of petitioner is illegal, and that such illegality consists in that he has been placed on trial before a jury of his peers, and in accordance with the laws of the State of Michigan, and the constitution of the State of Michigan, and the Federal Constitution, and that the discharge of the jury by the Circuit Judge amounts to jeopardy within the meaning of Section 14 of the constitution of the State of Michigan, and within the meaning of the 5th Amendment of the Constitution of the United States of America.

Wherefore, your petitioner prays that a Writ of Habeas Corpus may be issued by this Honorable Court to inquire

into the cause of said imprisonment and detention of this prisoner, or, in the alternative, that since the petitioner has no specific legal remedy without the aid of a Writ of Certiorari, he therefore prays that a Writ of Certiorari may be issued to the Honorable Paul V. Gadola, Circuit Judge, and to Jerome F. O'Rourke, Prosecuting Attorney, commanding them to certify the records and proceedings in said matter to this Court, and that upon a return thereof, that a hearing be held and that this petitioner be discharged on the ground that he has been in jeopardy.

John Raslich

Joseph & Joseph,
Attorneys for John Raslich.
226 W. Court St.,
Flint, Michigan.

(JURAT).

ANSWER TO APPLICATION FOR WRIT OF HABEAS CORPUS OR CERTIORARI

Now comes Jerome F. O'Rourke, Prosecuting Attorney for Genesee County, Michigan and makes answer to the Petitioner's Application for Writ of Habeas Corpus or Certiorari and says as follows:

I.

Answering Petitioner's Paragraph 1, the People admit the allegations therein contained.

II.

Answering Petitioner's Paragraph 2, the People admit the allegations therein contained.

III.

Answering Paragraph 3, the People aver that the Petitioner is presently confined in the Genesee County Jail

by virtue of a complaint, warrant and information filed against him charging him with Murder.

For the purpose of answering the remaining allegations of the Application hereinabove referred to the People aver as follows:

That the taking of testimony, before a jury, on the trial of the People of the State against John Raslich for Murder had, for all intents and purposes, been completed both as to the prosecution and as to the defense at or about 5:00 P. M. January 23, 1958.

That on the following morning, it came to the Court's attention the Honorable Paul V. Gadola presiding, that one of the 14 jurors empanelled could not fairly try the issues and render a verdict in the cause because of an anonymous telephone call received by her which was of an intimidating nature. The allegations of this juror, Mrs. Mabel King, were made to the Court in chambers in the presence of the Prosecuting Attorney and Mr. Joseph R. Joseph, counsel for the Respondent. At that time a consultation outside the presence of any juror was had between the Court and the Prosecutor and Mr. Joseph relative to the proper action to take considering this disclosure by Mrs. King.

(Some of the circumstances prior to the empanelling of the jury for the Raslich case should be brought to the Court's attention at this time in order that the sequence of events related and occurring on January 24, might be considered in their proper and perspective. During the week of January 13, the case of the People against James H. Fisher was tried before a jury in Genesee County Circuit Court. In that case, the Respondent's defense was that of "Temporary insanity", so called. The case received some considerable publicity as to the facts testified to, the Respondent in that case having shot and killed his wife and claiming that he did so at a time when he was unaware of what he was doing and the circumstances of which he could not now recall. After some deliberation, on the evening of January 22nd, 1958, the jury returned a verdict of not guilty by reason of temporary insanity. On the morning of January 23, 1958, the jury for the Raslich

case was drawn and sworn. Seven of the jurors from the Fisher case sat on the Raslich case. In the afternoon of January 23, a newspaper account of the alleged facts of the Fisher case and the result of the trial was published which contained the names of the jurors that had tried the Fisher case. It appeared during the course of the Respondent's trial, that his defense was that if he shot his female companion, it was at a time when he did not know what he was doing and the circumstances of which he could not now recall).

It might be noted at this point also, that Mrs. King advised the Court in the presence of Mr. Joseph, and the Prosecutor, that she had been advised that other jurors had received anonymous telephone calls relative to the verdict in the Fisher case and that the nature of these calls, the majority of which had been of an intimidating and disparaging nature, had been discussed by the entire jury panel including those members of the panel that had been sworn as jurors in the Raslich case. After consultation in chambers, the Respondent's counsel, Mr. Joseph, after a private consultation with his client, advised the Court that he felt that in view of the circumstances, his client would be unable to receive a fair and impartial verdict in the case at bar.

The court thereupon called the jury in the Raslich case into court and made an inquiry as is set out in the copy of the transcript of the proceedings had in the case at bar on the morning of Friday, January 24, 1958. This Deponent would call particular attention to the statement made by Mr. Joseph in open court, the Respondent and the jury present, after the Court had indicated that it would be unfair, in his opinion, both to the People and the Defendant to proceed, quote "I really appreciate the Court's interest in this matter, your Honor, and I think the Court is doing right."

IV.

That since the proceedings hereinabove referred to the Respondent has, through his attorney, filed a Waiver of Trial by jury. In addition thereto, he has filed a Motion for Dismissal based upon his belief that the jury previously empanelled in the Raslich case was improperly discharged

and that therefore, he has been once in jeopardy. This motion was dismissed on February 24, 1958. The trial of the case before the Court is now set for Tuesday, April 29, 1958.

Based upon the facts hereinabove set out and the transcript of the record made on January 24, 1958, the People move that the Respondent's Application for a Writ of Habeas Corpus or Certiorari be denied.

Jerome F. O'Rourke,
Prosecuting Attorney.

STATE OF MICHIGAN
SS.
COUNTY OF GENESEE

Jerome F. O'Rourke, being duly sworn deposes and says that he has read the foregoing Answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief and as to those matters he believes it to be true.

Subscribed and sworn to before me this 14th day of April, A. D., 1958.

(s) Joy Scofield,
Notary Public, Genesee County, Mich.
My commission expires: Aug. 21, 1956.

Jerome F. O'Rourke,
Prosecuting Attorney.
106 Court House,
Flint, Michigan.

PARTIAL PROCEEDINGS ON SECOND TRIAL PERTAINING TO DOUBLE JEOPARDY

(2)

Flint, Michigan
April 29, 1958.

MR. JOSEPH: May the record show I would like to renew all the motions I made, the motion to dismiss, based upon the examination that was made prior to the first trial, and also the motion to dismiss that was made —

THE COURT: They have all been passed on.

MR. JOSEPH: They are all renewed, and passed upon again?

THE COURT: They are not passed upon again. They have been passed upon once. I have considered them.

MR. JOSEPH: Would the Court want me to repeat all those?

THE COURT: No, you have them and they have been ruled on. I don't know whether you filed them in writing.

MR. JOSEPH: They have been filed in writing.

(3)

THE COURT: All right; they are in the record and passed upon.

Flint, Michigan
April 30, 1958.

MR. JOSEPH: Your Honor, for the purpose of the record and to preserve our rights under the other matter, I want to offer in evidence a transcript of the proceedings that took place on the morning of Friday, January 24th, 1958, which is our Exhibit 1, and the Prosecutor and I have agreed, subject to the Court's approval, that the case had opened. I want this in the record. Several witnesses had been sworn, cross examined.

THE COURT: The record shows all this.

MR. JOSEPH: I'd like to have this offered in evidence in this case.

THE COURT: I don't know what it is.

MR. JOSEPH: This is the transcript. Does the Court want —

(4)

THE COURT: Does it show the conference you had with me and with the Prosecutor where you agreed that it would be the best thing that a mistrial was declared?

MR. JOSEPH: It doesn't show that, the conference.

THE COURT: Do you agree that occurred?

MR. JOSEPH: I agree the matter was talked about with the Court in chambers, and the Court wanted me and the Prosecutor wanted me to make a motion for a mistrial, and then while I was out checking, when I came back the Court told me and the Prosecutor told me under the Schipp's case it wasn't even necessary to do that, that the Court in his discretion could make this finding and so —

THE COURT: And you agreed that that was all right.

MR. JOSEPH: I agreed at that time that I thought the Court was doing the proper thing.

THE COURT: That's all I wanted. I wanted to have the record correct as to what you did.

MR. O'ROURKE: Your Honor, I would like to just enlarge on that. My recollection is this also, Mr. Joseph

(5)

was advised of what had happened by the Court in chambers, and then he requested some time to check with his client to determine whether or not they wanted to proceed. He came back in and said, "My client does not feel he can have a fair trial," and then he agreed the best thing to do was to have this case or that case at that time brought to an end.

THE COURT: That's right.

MR. O'ROURKE: As long as he is making a record of these matters I think the whole picture should —

MR. JOSEPH: Then I think the record should show my consultation in this case was with the Reverend and with his brother, — with his sister and brother-in-law, and not with the respondent himself. Now, if you want to go that far.

THE COURT: You are an officer of the Court; you are

amenable to the Court, not the rest of them. We know what you did. We are not going to allow you to conceal exactly what occurred.

MR. JOSEPH: I am not trying to.

THE COURT: We are not going to have it. We are

(6)

going to have it exactly as it occurred.

MR. JOSEPH: We have no further testimony. That exhibit is offered in evidence, your Honor.

MR. O'ROURKE: I have no objection to it being in, your Honor.

THE COURT: All right.

NOTE: The Exhibit referred to has has been printed completely in the forepart of this appendix and is entitled "Proceedings held in the Above Entitled Cause Before the Honorable Paul V. Gadola and a Jury, on Friday, January 24, 1958." Reprinting of the exhibit has been omitted.

(7)

STATE OF MICHIGAN

SS.

COUNTY OF GENESEE

I, Virginia Bertelsen, do hereby certify that I reported stenographically the proceedings had and testimony taken in the matter of The People of the State of Michigan vs. John Raslich, before the Honorable Paul V. Gadola, Circuit Judge, on the 29th and 30th days of April, 1958, and that the foregoing and attached six pages constitute a full and correct record of the excerpt of proceedings requested by the attorney for respondent.

Virginia Bertelsen,
Court Reporter.

Flint, Michigan
September 25, 1958.

JOURNAL ENTRY OF THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

At a general term of the Circuit Court for the County of Genesee, continued and held at the Court House, in the City of Flint, in said County, on Wednesday, the 30th day of April, 1958.

Present, Hon. Paul V. Gadola, Circuit Judge.

In this cause, the Court heard balance of proofs and allegations, arguments of counsel waived, and being fully advised in the premises, finds that the said respondent is GUILTY of Murder in the Second Degree. Sentence deferred to June 2, 1958. Respondent remanded to custody of Sheriff.

The Court did some Chancery business whereupon Court was adjourned until tomorrow morning at nine o'clock.

Paul V. Gadola,
Circuit Judge.

STATE OF MICHIGAN
SS.
COUNTY OF GENESEE

I, GEORGE G. DUNN, Clerk of the County of Genesee, and Clerk of the Circuit Court for said County, the same being a Court of Record and having a seal, do hereby certify that I have compared the annexed copy of Journal Entry with the original record thereof now remaining in my office, and have found the said copy to be, and that the same is, a true and correct transcript therefrom, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Flint, in said County and State, this 19th day of September, 1958.

George G. Dunn,
(SEAL) Clerk.
By Joy Scofield,
Deputy Clerk.

JOURNAL ENTRY OF THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

At a general term of the Circuit Court for the County of Genesee, continued and held at the Court House, in the City of Flint, in said County, on Monday, the 2nd day of June, 1958.

Present, Hon. Paul V. Gadola, Circuit Judge.

John Raslich, the respondent in this cause, having been by the Verdict of the Court convicted of the crime of Murder in Second Degree, as appears by the record thereof, and having been by the Prosecuting Attorney brought to the bar of the Court for sentence, and having there been asked by the Court if he had anything to say why judgment should not be pronounced against him, and having said what he had to say;

Therefore, it is Ordered and Adjudged by the Court now here that the said respondent be committed to the Michigan Corrections Commission at the State Prison of Southern Michigan at Jackson, Michigan under the provisions of the Michigan Code of Criminal procedure and the Michigan Penal Code for a period of not less than seven and one-half (7½) years, nor more than Twenty (20) years, with a recommendation of Seven and one-half (7½) years, from and after this date.

The Court did some Chancery business whereupon Court was adjourned until tomorrow morning at nine o'clock.

Paul V. Gadola,
Circuit Judge.

STATE OF MICHIGAN
SS.
COUNTY OF GENESEE

I, GEORGE G. DUNN, Clerk of the County of Genesee, and Clerk of the Circuit Court for said County, the same being a Court of Record and having a seal, do hereby certify that I have compared the annexed copy of Journal Entry with the original record thereof now remaining in my

office, and have found the said copy to be, and that the same is, a true and correct transcript therefrom, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Flint, in said County and State, this 19th day of September, 1958.

(SEAL)

George G. Dunn,
Clerk.
By Joy Scofield,
Deputy Clerk.

APPLICATION FOR LEAVE TO APPEAL

IN THE SUPREME COURT
FOR THE STATE OF MICHIGAN

People of the State of Michigan

vs. Case No. 16269

John Raslich

The defendant, John Raslich, makes application for leave to appeal and shows unto the Court as follows:

1. That he was charged with the crime of murder and convicted of second degree murder.
2. That on June 2nd, 1958, he was sentenced by the Honorable Paul V. Gadola to serve a term of 7½ to 15 with a recommendation of the minimum term.
3. That applicant desires to take a general appeal.
4. That attached hereto and made a part hereof is a concise statement of all proceedings and facts as far as they are material and pertain to the question of double jeopardy.
5. That defendant desires bail pending appeal; no bail having been set by the lower court.

Application for Leave to Appeal
Order Denying Petition for Writ of Habeas Corpus

6. Reasons and grounds for appeal are:

1. That defendant has been placed in jeopardy within the meaning of the Michigan Constitution, and also within the meaning of the Fifth Amendment to the Federal Constitution which provides: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb".

Joseph and Joseph,
Attorneys for Appellant.,
226 W. Court Street,
Flint, Michigan.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room in the Capitol, in the City of Lansing, on the eleventh day of June in the year of our Lord one thousand nine hundred and fifty-eight.

Present the Honorable JOHN R. DETHMERS, Chief Justice.

Leland W. Carr,
Harry F. Kelly,
Talbot Smith,
Eugene F. Black,
George Edwards,
John D. Voelker,
Thomas M. Kavanagh,
Associate Justices.

In the Matter of

47850½

John Raslich.

In this matter a petition is filed for the allowance of a writ of habeas corpus, and an answer in opposition there-

to having been filed by plaintiff, and due consideration thereof having been had by the Court, it is ordered that the petition be and the same is hereby denied — lawful order for detention and jurisdiction to enter the same appearing.

STATE OF MICHIGAN — ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said Court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 17th day of June in the year of our Lord one thousand nine hundred and fifty-eight.

(SEAL) Donald F. Winters,
Clerk.

ORDER DENYING LEAVE TO APPEAL

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the fifteenth day of July in the year of our Lord one thousand nine hundred and fifty-eight.

Present the Honorable JOHN R. DETHMERS, Chief Justice,

Leland W. Carr,
Harry F. Kelly,
Talbot Smith,
George Edwards,
John D. Voelker,
Thomas M. Kavanagh,
Associate Justices.

The People of the State of Michigan,
Plaintiff,
vs. 47884½

John Raslich,
Defendant.

In this cause an application is filed by defendant for leave to appeal from an order of the Circuit Court for the County of Genesee and a brief in opposition thereto having been filed by the plaintiff, and due consideration thereof having been had by the court, It is ordered that the application be and the same is hereby DENIED.

STATE OF MICHIGAN — ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 15th day of July in the year of our Lord one thousand nine hundred and fifty-eight.

(SEAL) Donald F. Winters,
Clerk.

MICHIGAN STATUTES

§28.1041 Jury of fourteen; empaneling; procedure.) Sec. 18. Any judge of a court of record in this state about to try a criminal case which is likely to be protracted, may order a jury empaneled of not to exceed fourteen (14) members, who shall have the same qualifications and shall be empaneled in the same manner as is, or may be, provided by law for empaneling juries in such courts. All of said jurors shall sit and hear said cause. Should any condition arise during the trial of said cause which in the opinion of the trial court justifies the excusal of any of the jurors so empaneled from further service, he may do so and said trial shall proceed, unless the number of said jurors be reduced to less than twelve (12), and in the event that there shall be more than twelve (12) jurors left on said jury after the charge of the court, the clerk of the court in the presence of said court shall place the names of all of the said jurors on slips, folded so as to conceal the names thereon, in a suitable box provided for that purpose, and shall draw therefrom the names of a sufficient number to reduce the jury to twelve (12) members who shall then proceed to determine the issue presented in the manner provided by law. (C.L. '48, §768.18; C.L. '29, §17311.)

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Article V.

Rights of persons charged with crimes; guaranty of life, liberty and property. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article XIV.

Citizenship; security of persons and property, due process and equal protection clauses. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.